



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Scott B. Mackenzie
Tea Party Majority Fund
2776 S. Arlington Mill Drive # 806
Arlington, VA 22206

NOV 27 2018

RE: MUR 7545 (Tea Party Majority Fund)

Dear Mr. Mackenzie:

On November 14, 2018, the Federal Election Commission found that there is reason to believe Tea Party Majority Fund and you, as treasurer, violated 52 U.S.C. §§ 30104(b)(4)(H)(iii), 30104(b)(8), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as the Commission's regulations at 11 C.F.R. §§ 104.4, 104.3(d), 104.11(a). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(2). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law. Enclosed is a conciliation agreement for your consideration

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

If you are interested in engaging in pre-probable cause conciliation, please contact Amanda Andrade, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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7 **RESPONDENTS:** Tea Party Majority Fund MUR 7545
8 and Scott B. Mackenzie
9 in his official capacity
10 as treasurer

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12 **I. INTRODUCTION**

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14 The Commission's Reports Analysis Division ("RAD") originally referred Tea Party
15 Majority Fund and Scott B. Mackenzie in his official capacity as treasurer ("TPMF") to the
16 Audit Division based on a number of apparent reporting violations. The Commission
17 subsequently transferred this matter to the Office of the General Counsel ("OGC"). The Referral
18 concerns TPMF's failure to provide supporting schedules for independent expenditures totaling
19 \$1,809,786.12 made during the 2016 election cycle. Specifically, RAD referred TPMF's
20 apparent failure to file two 48-Hour Reports and disclose debts in three reporting periods. TPMF
21 contends that it properly reported its debts and filed all necessary 48-Hour Reports.¹

22 As set forth below, TPMF failed to properly report independent expenditures that were
23 disseminated prior to payment and disclose reportable debt. The Commission therefore finds
24 reason to believe that TPMF violated 52 U.S.C. § 30104(b)(4)(H)(iii) and 11 C.F.R. § 104.4 by
25 failing to accurately report its independent expenditures and 52 U.S.C. § 30104(b)(8) and
26 11 C.F.R. §§ 104.3(d), 104.11(a) by not properly disclosing its debts and obligations.

¹ Resp. at 4 (Dec. 21, 2017).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 TPMF is an independent-expenditure-only political committee that registered with the
4 Commission on July 21, 2014.² In 2015 and 2016, TPMF reported making hundreds of
5 thousands of dollars in independent expenditures to a vendor for “voter contact calls” in
6 opposition to presidential candidate Hillary Clinton.³ Based on a number of questionable
7 reporting entries, RAD sent TPMF Requests for Additional Information (“RFAs”) regarding
8 TPMF’s 2015 Mid-Year Report,⁴ 2016 April Quarterly Report,⁵ 2016 July Quarterly Report,⁶
9 2016 October Quarterly Report,⁷ and 2016 Pre-General Report.⁸ TPMF submitted two amended
10 2015 Mid-Year Reports⁹ along with a response to the RFAI for that period.¹⁰ TPMF did not
11 address RAD’s concerns for any of its 2016 reports.

12 A breakdown of the apparent violations per report is listed in the following chart.

REPORT	REFERRED ISSUE
2016 April Quarterly	<ul style="list-style-type: none">• Failure to disclose a debt on Schedule D where TPMF disclosed \$400,000 in IEs that were publicly disseminated prior to payment

² See TPMF, Statement of Organization (July 21, 2014).

³ See TPMF, 2015 Mid-Year Report (July 27, 2015); 2016 April Quarterly Report (Apr. 15, 2016); 2016 July Quarterly Report (July 11, 2016); 2016 October Quarterly Report (Oct. 8, 2016); and 2016 Pre-General Report (Oct. 26, 2016).

⁴ RFAI: Mid-Year Report 2015 (Sept. 22, 2015).

⁵ RFAI: April Quarterly 2016 (Jan. 19, 2017).

⁶ RFAI: July Quarterly 2016 (Oct. 11, 2016).

⁷ RFAI: October Quarterly 2016 (Dec. 5, 2016).

⁸ RFAI: Pre-General 2016 (Feb. 23, 2017).

⁹ TPMF, 2015 Mid-Year Report: Amendment 1 (Oct. 30, 2015); 2015 Mid-Year Report: Amendment 2 (Jan. 17, 2016).

¹⁰ TPMF, Misc. Report to FEC 2015 (Oct. 30, 2015).

REPORT	REFERRED ISSUE
	<ul style="list-style-type: none">• Failure to file a 48-Hour Report for \$353,273.16 in independent expenditures disclosed on Schedule E
2016 October Quarterly	<ul style="list-style-type: none">• Failure to disclose a debt on Schedule D where TPMF disclosed \$450,000 in IEs that were publicly disseminated prior to payment• Failure to file a 48-Hour Report for \$393,569.24 in independent expenditures disclosed on Schedule E
Amended 2016 12-Day Pre-General	<ul style="list-style-type: none">• Failure to disclose a debt on Schedule D where TPMF disclosed \$212,943.72 in IEs that were publicly disseminated prior to payment

1 On November 17, 2017, the Commission sent a Notification Letter to TPMF alerting that
2 TPMF had been referred to OGC for possible enforcement action.¹¹ TPMF responded that it
3 acted in good faith and used best efforts, and the Commission should take no further action.¹²

4 **B. Legal Analysis**

5 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires each
6 treasurer of a political committee to file reports of receipts and disbursements in accordance with
7 the provisions of 52 U.S.C. § 30104(b).¹³ This requirement includes reporting independent
8 expenditures ("IEs") made by political committees other than authorized committees.¹⁴ Every
9 political committee that makes IEs must report them in its regularly scheduled disclosure reports
10 in accordance with 11 C.F.R. § 104.3(b)(3)(vii).¹⁵ In addition, a political committee that makes

¹¹ Notification Letter from Jeff Jordan to Scott MacKenzie, Tea Party Majority Fund (Nov. 17, 2017).

¹² Resp. at 4.

¹³ 52 U.S.C. § 30104(a)(1).

¹⁴ 52 U.S.C. § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(1)(vii).

¹⁵ 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an IE by the reporting committee. The report also must disclose the date, amount, and purpose of any such IE and include a statement that indicates whether such IE is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. IEs of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*; see also 11 C.F.R. § 104.3(b)(3)(vii).

1 or contracts to make IEs aggregating \$10,000 or more for an election in any calendar year, up to
2 and including the 20th day before an election, must report these expenditures within 48 hours.¹⁶
3 These reports, known as 48-Hour Reports, must be filed by the end of the second day "following
4 the date on which a communication that constitutes an independent expenditure is publicly
5 distributed or otherwise publicly disseminated."¹⁷ Additionally, "[e]very person must include in
6 the aggregate total all disbursements during the calendar year for independent expenditures, and
7 all enforceable contracts, either oral or written, obligating funds for disbursements during the
8 calendar year for independents expenditures, where those independent expenditures are made
9 with respect to the same election for Federal office."¹⁸

10 The Act and Commission regulations also require political committees to disclose the
11 amount and nature of its outstanding debts and obligations until those obligations are
12 extinguished.¹⁹ A political committee must file separate schedules for debts owed by and to the
13 committee with a statement explaining the circumstances and conditions under which each debt
14 and obligation was incurred and extinguished.²⁰ A similar statement is required where such
15 debts and obligations are settled for less than their reported amount or value.²¹ A debt of \$500 or
16 less must be reported at the time that payment was made or within 60 days of the date the
17 political committee incurs the debts, whichever comes first, and a debt exceeding \$500 must be

¹⁶ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

¹⁷ 11 C.F.R. § 104.4(b)(2).

¹⁸ *Id.* § 104.4(f).

¹⁹ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

²⁰ *See* 11 C.F.R. § 104.11(a).

²¹ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

1 disclosed in the report that covers the date on which the debt was incurred.²² Where the exact
2 amount of a debt is unknown, the report shall state that the amount reported is an estimate and
3 the exact amount is to be disclosed in an amended report or on the report for a reporting period in
4 which such amount is determined.²³ Debts and obligations that remain outstanding shall be
5 continuously reported until extinguished.²⁴ Independent expenditures made (i.e., publicly
6 disseminated) prior to payment should be disclosed as memo entries on Schedule E and as
7 reportable debt on Schedule D.²⁵

8 In the first quarter of 2016, TPMF listed IEs totaling \$753,273.16—of those,
9 \$400,000 were marked as memo entries, and the remaining \$353,273.16 were not,²⁶
10 suggesting that TPMF aired and paid for \$353,273.16 in IEs but also aired and had *not*
11 yet paid for \$400,000 in IEs. In addition, TPMF filed a 48-Hour Report disclosing
12 \$400,000 in IEs for this period, but RAD questioned why TPMF did not file an additional
13 48-Hour Report for the remaining \$353,273.16.²⁷ TPMF did not respond to RAD, but
14 explained in its response to the Notification Letter that the \$353,273.16 was “related to”
15 the \$400,000 in expenses already incurred during the same reporting period²⁸—in effect,

²² 11 C.F.R. § 104.11(b).

²³ *Id.*

²⁴ *Id.* § 104.11(a).

²⁵ See 11 C.F.R. §§ 104.4(f), 104.11; Bipartisan Campaign Reform Act of 2002 Reporting; Coordinated and Independent Expenditures; Final Rules, 68 Fed. Reg. 404, 407 (Jan. 3, 2003) (Explanation and Justification); Factual and Legal Analysis at 9, MUR 6587 (UAEPC); Factual and Legal Analysis at 2, MUR 6266 (National Right to Life PAC); Campaign Guide for Nonconnected Committees at 72 (2008).

²⁶ See TPMF, 2016 April Quarterly Report (Apr. 15, 2016) Schedule E.

²⁷ See TPMF, 48-Hour Report (Jan. 14, 2016); RFAI: April Quarterly 2016 (Jan. 19, 2017).

²⁸ Resp. at 3.

1 TPMF appears to have listed both a debt (\$400,000) and its repayment (\$353,273.16) as
2 IEs. Because TPMF never provided that information in its report, TPMF's 2016 April
3 Quarterly Report appears to disclose significantly higher IEs (over \$750,000) than the
4 committee now claims to have actually made (\$400,000).

5 Similarly, for the third quarter of 2016, TPMF listed IEs totaling \$843,569.24, but
6 that number appears to be much higher than TPMF's actual IEs. TPMF reported
7 \$450,000 as a memo entry without any explanation, and also reported \$393,569.24 in
8 non-memo items. TPMF filed a 48-Hour Report disclosing \$450,000 in IEs for this
9 period, but RAD again questioned why TPMF did not file a 48-Hour Report for the
10 remaining amount.²⁹ TPMF again failed to respond to RAD, and offered the same
11 explanation in response to the Notification Letter—that the \$393,569.24 was “related to”
12 the \$450,000 in IEs already reported.³⁰ These amounts are summarized below.

REPORT	2016 APRIL QUARTERLY REPORT	2016 OCTOBER QUARTERLY REPORT
Total Memo Entry IEs	\$400,000	\$450,000
Total Non-Memo Entry IEs	\$353,273.16	\$393,569.24
Total Apparent IEs	\$753,273.16	\$843,569.24
48-Hour Reports Filed	\$400,000	\$450,000
Debts and Obligations Disclosed	None	\$56,430.76 (\$450,000 - \$393,569.24)

13
14 Additionally, the Committee did not report any debts or obligations in its 2016 April
15 Quarterly Report. As noted above, however, TPMF reported \$400,000 in memo entries, but only

²⁹ See TPMF, 48-Hour Report (July 11, 2016); RFAI: October Quarterly 2016 (Dec. 5, 2016).

³⁰ Resp. at 4.

1 \$353,273.16 in non-memo items. Accepting TPMF's response that the \$353,273.16 was a partial
2 payment for \$400,000 in expenses, TPMF would have had \$46,726.84 in debts for that reporting
3 period that should have been disclosed. In its response to the Notification Letter, TPMF does not
4 dispute that it incurred debt during this period, but instead writes that "[i]n a later amended 1st
5 Quarter 2016 FEC Disclosure Report, the [C]ommittee reported a debt on Schedule D for
6 \$46,726.84."³¹ There is, however, no record of TPMF ever filing an amended 2016 April
7 Quarterly Report.

8 Furthermore, in its 2016 Amended 12 Day Pre-General Report, TPMF listed a
9 memo entry for \$212,943.72 with no accompanying information. In its response to the
10 Notification Letter, TPMF claimed it was merely an amended figure, and "[t]he original
11 budgeted amount reported was \$450,000; however, the number was reduced to reflect the
12 actual spending figures. As such, no debt was required to be reported on Schedule D."³²
13 However, it is not clear what \$450,000 disclosure TPMF intended to reference, why this
14 figure was reported as a memo entry, or whether TPMF had any debt at the time of the
15 filing. Accordingly, in the absence of any coherent explanation, the Commission will
16 treat this \$212,943.72 as an undisclosed debt.

17 Based on these errors, the Commission finds reason to believe that TPMF violated
18 52 U.S.C. § 30104(b)(4)(H)(iii) and 11 C.F.R. § 104.4 by failing to accurately report its
19 independent expenditures and 52 U.S.C. § 30104(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a) by
20 not properly disclosing its debts and obligations.

³¹ *Id.* at 3;

³² *Id.*